

Report from the
Hudson River Estuary Management Advisory Committee
to
John P. Cahill, Commissioner,
New York State Department of Environmental Conservation
on
Reopening a Hudson River Striped Bass Commercial Fishery

September 1999

On May 9, 1999, Governor George Pataki directed New York State Department of Environmental Conservation (DEC) Commissioner John Cahill to consult with the Hudson River Estuary Management Advisory Committee (Committee) about whether the Hudson River commercial striped bass fishery should be reopened on a limited basis (copy of press release attached). On June 18, 1999, Gerald Barnhart, Director of the Division of Fish, Wildlife and Marine Resources for DEC requested that the Committee address ten questions predicated on the assumptions listed below (copy of letter attached). Committee members added an additional question to the charge concerning human health protection. This report is the result of deliberations of the Committee in July and August of 1999.

Major Findings and Recommendations:

1. *Overall Recommendation:* The Committee recommends reopening the commercial striped bass fishery as a bycatch of the shad fishery located between the George Washington Bridge and the Bear Mountain Bridge, and in accordance with the recommendations contained in this report. This overall recommendation is predicated on two assumptions. The first assumption is that PCB levels in striped bass harvested in the designated fishery area of the lower estuary will reach acceptable levels consistent with the US Food and Drug Administration regulations and NYS Health policy. One Committee member (Scenic Hudson) raised concerns about the adequacy of the FDA standard for protection of human health and this issue should be considered as part of DEC and Department of Health's deliberations. The second assumption is that the Atlantic States Marine Fisheries Commission will approve a commercial striped bass fishery, and the new fishery will have an allowable harvest at a level comparable to recent striped bass bycatch mortality that is associated with the commercial shad fishery. These assumptions are slight modifications of the ones contained in Mr. Barnhart's June 18, 1999, letter. They are revised to reflect new information provided to the Committee along with the Committee's interpretation of the original assumptions.
2. *Enforcement:* Opening of a bycatch commercial striped bass fishery on the Hudson between the George Washington Bridge and the Bear Mountain Bridge must be

accompanied by rules and regulations necessary to provide effective enforcement of conditions placed upon that fishery. In addition, the Committee recommends that DEC explore all possible means to establish strict and uniform penalties for the illegal taking of striped bass and other fish. While members are aware of enforcement actions against violators for striped bass poaching, levied penalties have been minimal at best. Committee members are concerned that ineffective enforcement of poaching erodes the credibility of all of DEC's Hudson River fishery management programs, and poaching may become more widespread if a commercial striped bass fishery is reopened. Therefore, it is requested that appropriate DEC representatives meet with the Committee in the near future to discuss enforcement issues, that DEC pursue action (including proposing legislation) to stiffen penalties, and that DEC make demonstrable progress in pursuing these objectives prior to reopening a striped bass commercial fishery.

3. *Education and Outreach:* The Committee recommends that DEC institute an enhanced public education and outreach program to discuss the elements of a reopened commercial striped bass fishery and the impacts that it would have on the striped bass population. The Committee is concerned that groups and individuals have taken positions regarding a reopening without the benefit of the excellent technical information that DEC staff has put together regarding the condition of the striped bass population, the factors that affect its status, and the likely impacts of a limited commercial fishery. The Committee is aware that DEC has already undertaken some valuable outreach, and more is encouraged.
4. *Public Health:* The Committee is concerned about mixed messages sent to the public during the consideration and actual opening of a fishery. In particular, recreational anglers may view the discussion about reopening as a sign that PCB contamination of striped bass and other fish is no longer a problem. In addition, if a striped bass commercial fishery is reinstated for the portion of the Hudson River between the George Washington Bridge and the Bear Mountain Bridge, it is likely that health advisories for fish consumption by recreational anglers will still be required for this portion of the river as well as upriver reaches for striped bass and other species. While the majority of the Committee does not believe that deliberations on a commercial fishery reopening should be deterred by this issue, it will be incumbent upon DEC and the New York State Department of Health to clarify these public health issues on a continuing basis, and to intensify public education efforts for anglers by both agencies.
5. *Effects on the Shad Fishery:* The Committee recommends that DEC manage the striped bass bycatch fishery in a way that minimizes any negative impacts on the overall existing commercial shad fishery.

Committee Response to Questions Posed by DEC

The Committee's responses to questions posed by DEC are listed below. The questions were not addressed in the order listed in the charge but instead grouped thematically under the headings, *Stock Protection*, *Harvest Techniques*, *Eligibility*, and *Human Health Protection*. These responses were developed in light of the two assumptions provided by DEC as follows:

- A. Striped bass taken from the Hudson River between the George Washington Bridge and Poughkeepsie from March 15 to May 31 at sizes above 24" TL are acceptable for sale consistent with USFDA regulations and NYS Health policy.
- B. The Atlantic States Marine Fisheries Commission's Striped Bass Fishery Management Plan will allow commercial harvest of striped bass during the spawning run, provided such harvest involves no increase in recent by-catch removals from the population (6,170 fish or 47,000 lb.), that all catch is reported, and that each marketed fish is tagged consistent with existing marine district requirements.

I. Stock Protection (Questions 5,10)

- 5. *What measures are required to prevent the striped bass kill from exceeding the Total Allowable Catch (TAC)? (Total Allowable Catch is understood to be the maximum amount of striped bass that can be commercially harvested in a given year.)*
 - The use of a modified version of marine district regulations (striped bass permit, numbered tags allotted to individual permit holders to be used only by that individual, weekly reporting of catch and tag use) would be effective and a proven control measure according to DEC fisheries staff.
 - If the TAC is reached, the fishery can be closed quickly by phone with follow-up by mail. This was done effectively by DEC staff in the Hudson River sturgeon fishery.
 - To prevent TAC from being exceeded, adjustments can be made to the length of the open season as well as annual adjustments in number of tags issued.
 - There are business considerations that may lead permitted fishers to self-regulate their harvest. For instance, market factors influence the size and amount of fish sold at one time. Harvesting one's quota of bass all at once, rather than taking them through the season in nets intended for shad, could glut the market and lower the price paid to the fisher.
 - If shad netting continued after a season's striped bass quota was taken, there would be continued bycatch mortality of bass. This issue sparked considerable discussion. One suggestion was that any bass quota be set lower than the theoretical TAC. Another more conservative but onerous alternative would be to shut down the shad fishery when bass harvest reached the TAC. Given the short window (roughly four weeks) in

which most of the shad catch occurs, along with the market considerations described above, it was also suggested that exceedance of the TAC would be minimal. Andy Kahnle and Kathy Hattala of the Hudson River Fisheries Unit of DEC along with Byron Young of Division of Fish, Wildlife and Marine Resources of DEC offered to model harvest scenarios, examining the likely impacts of variation in such factors as the timing of fishing effort and the gear and geographic area involved.

→ If the TAC is exceeded, the overage will be deducted from the following year's TAC.

10. *What additional enforcement/compliance issues must be addressed and how? (See also Section IV: Human Health Protection)*

Opening of a by-catch commercial striped bass fishery on the Hudson should be accompanied by rules and regulations necessary to provide effective enforcement.

- Implement automatic fines and stronger penalties to take the profit out of poaching striped bass and other species. Assessing fines administratively (when a ticket is written and according to an established set of penalties, as is done with traffic tickets) would be a more effective deterrent than having fines in court, as is currently the case. This change would require an act of the legislature.
- Institute state laws and regulations for all fisheries that are effective, understandable and enforceable.
- Implement a policy that with a second violation a fisher could lose their license for up to five years.
- Require fishing vessels with striped bass tags and tagged bass to launch, fish, and haul out only within the area open to bass fishing. A boat found outside the open area with tagged fish on board would be in violation.

II. Harvest Techniques (Questions 8, 9, 2, 3, 4)

8. *Should the minimum length of striped bass be set at 18", 24" or some other alternative?*

- 24" - this is the minimum size currently legal for sale in the commercial fishery in New York State.

9. *Should the Hudson River shad gill net minimum mesh size be changed to reflect the striped bass size limit?*

- Suggest increasing the gill net stretch mesh size to 5 ½" - 6". This stretch mesh size is selective for bass 24" and above which is the minimum legal size and also a size that

brings a good market price. The current minimum stretch mesh size is 5". Three of the commercial fishermen on the Committee recommended that this change of mesh size be applicable only to those shad fishermen allowed to take striped bass.

2. *Should such a fishery operate as a bycatch allowance in the shad gill net fishery?*

→ Yes. Allowing a bycatch of striped bass in the commercial shad gill net fishery will supplement income and thereby help preserve the heritage of the last commercial fishery on the Hudson. Most of the TAC will be filled with fish that would have been killed anyway.

3. *Alternatively, should the striped bass quota support a directed fishery up to a 47,000 lb. TAC with shad as a bycatch?*

→ Not at this time. A bycatch of the shad fishery is preferred in large part because the shad fishery has always been the primary focus in this area.

4. *Should any gears other than gill nets be used? Hook and line as in the Marine District? Haul seines?*

→ No. The existing shad fishery, in which striped bass are a bycatch, is chiefly a gill net fishery. Other gear is less size selective in harvesting fish and enforcement would be difficult.

III. Eligibility (Questions 6, 7)

6. *Should eligibility to participate be limited? To whom and based on what criteria?*

→ Yes, to Hudson River shad fishers that meet the following criteria below:

- a. Must have a shad gill net license and/or gill net license; **and**
- b. Must show documented shad harvest prior to 1997 for x amount of years (x = to be determined); **and**
- c. Historically have fished in the proposed open area (Bear Mountain Bridge to the George Washington Bridge); **and**
- d. Must not have record of past illegal striped bass violations.

7. *Should eligible fishers be assigned an individual quota? How should such a quota be allocated among participants?*

→ Yes. The quota should be equally distributed among eligible fishers.

IV. Human Health Protection

11. Will reopening the striped bass commercial fishery dilute the effectiveness of health advisories?

→ *Public Health:* The Committee is concerned about mixed messages sent to the public during the consideration and actual opening of a fishery. In particular, recreational anglers may view the discussion about reopening as a sign that PCB contamination of striped bass and other fish is no longer a problem. In addition, if a striped bass commercial fishery is reinstated for the portion of the Hudson River between the George Washington Bridge and the Bear Mountain Bridge, it is likely that health advisories for fish consumption by recreational anglers will still be required for striped bass and other species. While the majority of the Committee does not believe that deliberations on a commercial fishery reopening should be deterred by this issue, it will be incumbent upon DEC and the New York State Department of Health to clarify these public health issues on a continuing basis, and to intensify public education efforts for anglers by both agencies.

10. What additional enforcement/compliance issues must be addressed and how?

→ It is recommended that the open area be from the Bear Mountain Bridge south to the George Washington Bridge. Fisheries staff believe these obvious demarcation lines will assist enforcement. In addition, NYS Environmental Conservation Law prohibits commercial fishing in the area between the Newburgh Beacon Bridge and the Bear Mountain Bridge to protect fish on spawning grounds (though it makes an exception in allowing use of drift nets there). Recommending an open area with a northern limit well below Poughkeepsie increases the likelihood that PCB levels in bass from the open area would conform to DOH requirements. It should be recognized that there are hot spots of PCB contamination within the open area, for example at Hastings-on-Hudson. DEC should maintain enhanced monitoring in order to evaluate the effects of hot spots to the potential fishery.

Appendix

The preceding report “Reopening a Hudson River Striped Bass Commercial fishery” was prepared by the Hudson River Estuary Management Advisory Committee (HREMAC). The HREMAC, pursuant to its role established in Environmental Conservation Law (11-0306), is the “committee with whom the [Department of Environmental Conservation] commissioner shall consult on regulatory, policy and other matters affecting the management, protection and use of the Hudson River estuarine district”, and matters “regarding any planned or anticipated regulatory or policy changes which will affect the estuarine district.”

A list of HREMAC members was not included in the original report. It is included here to provide clarity on the make-up of the Committee.

Dennis Suszkowski, Chair	Hudson River Foundation
Andi Bartczak	Clearwater
Henry Bokuniewicz	Marine Sciences Research Center, SUNY Stonybrook
Jeff Clock	Central Hudson Gas and Electric
Cara Lee	Scenic Hudson
Eric Lind	National Audubon Constitution Marsh Sanctuary
Evertt Nack	Nack’s Bait Shop
Stuart Findley	Institute of Ecosystem Studies
Robert Gabrielson Sr.	NY Commercial Fisherman’s Association
Robert Weiss	Federation of Dutchess County Fish and Game Clubs
Bob Creeden	Hudson River Waterfowl Protective Association
Tom Lake	Naturalist (IBM retiree)
John Young	Consolidated Edison Power Company
John Mylod	M.T. Net Company